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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,441	05/29/2001	Doug Grumann	10002687-1	3760

22879 7590 06/16/2006

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INTELLECTUAL PROPERTY ADMINISTRATION  
FORT COLLINS, CO 80527-2400

EXAMINER

YIGDALL, MICHAEL J

ART UNIT PAPER NUMBER

2192

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Interview Summary</b>	<b>Application No.</b> 09/865,441	<b>Applicant(s)</b> GRUMANN, DOUG	
	<b>Examiner</b> Michael J. Yigdoll	<b>Art Unit</b> 2192	

All participants (applicant, applicant's representative, PTO personnel):

(1) Michael J. Yigdoll. (3) \_\_\_\_\_.

(2) Kelly T. Lee (Reg. No. 47,743). (4) \_\_\_\_\_.

Date of Interview: 06 June 2006.

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.

If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: 1, 12 and 19.

Identification of prior art discussed: U.S. Patent No. 5,590,056 (Barritz).


Agreement with respect to the claims f) ☒ was reached. g) ☐ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Agreed that the proposed amendment would distinguish over Barritz, but that the proposed amendment would require further consideration and/or search.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

MY

  
TUAN DAM  
SUPERVISORY PATENT EXAMINER

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

\_\_\_\_\_  
Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

#### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

##### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

#### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

### Applicant Initiated Interview Request Form

Application No.: 09/865,441 First Named Applicant: Doug Gorman  
 Examiner: Yigdal Art Unit: 2192 Status of Application: Pending

#### Tentative Participants:

(1) Kelly Lee (2) \_\_\_\_\_  
 (3) \_\_\_\_\_ (4) \_\_\_\_\_

Proposed Date of Interview: 6/6 Proposed Time: 2 (AM/PM)

#### Type of Interview Requested:

(1) ☒ Telephonic (2) ☐ Personal (3) ☐ Video Conference

Exhibit To Be Shown or Demonstrated: ☐ YES ☐ NO

If yes, provide brief description: \_\_\_\_\_

### Issues To Be Discussed

Issues (Rej., Obj., etc)	Claims/ Fig. #s	Prior Art	Discussed	Agreed	Not Agreed
(1) <u>103</u>	<u>1</u>	<u>Barthz</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☐ Continuation Sheet Attached

#### Brief Description of Arguments to be Presented:

Barthz does disclose or suggest claim 1 as amended.  
not

An interview was conducted on the above-identified application on \_\_\_\_\_.

#### NOTE:

This form should be completed by applicant and submitted to the examiner in advance of the interview (see MPEP § 713.01).

This application will not be delayed from issue because of applicant's failure to submit a written record of this interview. Therefore, applicant is advised to file a statement of the substance of this interview (37 CFR 1.133(b)) as soon as possible.

\_\_\_\_\_  
 (Applicant/Applicant's Representative Signature)

\_\_\_\_\_  
 (Examiner/SPE Signature)

This collection of information is required by 37 CFR 1.133. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE****Appl. No.** : 09/865,441**Applicant** : Doug GRUMMAN**Filed** : May 29, 2001**Title** : AUTOMATIC CONFIGURATION OF PERFORMANCE  
MANAGEMENT TOOLS**TC/A.U.** : 2192**Examiner** : Yigdall, Michael J.**Docket No.** : 10002687-1**Customer No.** : 022879

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P.O. Box 1450  
Alexandria, Virginia 22313-1450

**AMENDMENT TO ACCOMPANY REQUEST FOR CONTINUED EXAMINATION**  
**UNDER 37 C.F.R. § 1.114**

Sir:

In response to the Final Office Action mailed March 31, 2006, please amend the above-identified application as follows:

**Amendments to the Claims** are reflected in the listing of claims which begins on page 2 of this paper.

**Remarks** begin on page 6 of this paper.

draft - not for entry MY 6/6/06

**DRAFT**

App. no. 09/805,441

Response dated \_\_\_\_\_

Reply to Final Office Action of March 31, 2006

**DRAFT****AMENDMENTS TO THE CLAIMS:**

This listing of claims will replace all prior version, and listings, of claims in the application.

**Listing of Claims:**

1. (currently amended): A method for automatically configuring performance management software in a computer system, comprising:

inventorying applications and performance management tools;

generating an inventory list of the applications and the performance management tools;

using the inventory list, generating a performance management tools configuration consisting of application-specific interfaces, performance thresholds, collection parameters and alarms applicable to specific performance management tools and the current operating system environment; and

automatically restarting, without intervention of an administrator, the performance management software to engage the configuration of the performance management tools.

2. (original): The method of claim 1, wherein the method is executed upon start up of the computer system.

3. (original): The method of claim 1, wherein the method is executed on demand.

4. (original): The method of claim 1, wherein the method is executed periodically.

5. (original): The method of claim 1, wherein the method is executed automatically.

6. (original): The method of claim 1, wherein the step of generating the inventory list comprises writing inventory information to an ASCII-format file.

draft - not for entry MY 6/6/06

**DRAFT**

7. (canceled)
8. (original): The method of claim 1, wherein the inventory step comprises inventorying installed application programs and installed performance management tools.
9. (original): The method of claim 8, further comprising inventorying active application programs and active performance management tools, wherein the active application programs and performance management tools are flagged to indicate an active status.
10. (original): The method of claim 1, further comprising:  
manually amending the inventory list; and  
repeating the step of generating the performance management tools configuration.
11. (original): The method of claim 1, further comprising storing the inventory list and the performance management tools configuration in a memory.
12. (currently amended): An apparatus that configures performance management tools in a computer system, comprising:  
a registry that reads information from hardware devices, application programs, and performance management programs;  
a kernel coupled to the registry that receives the information read by the registry and writes the information to an inventory file;  
a file generator that receives the inventory file and information related to the computer system and generates a performance management tools configuration file, wherein the configuration file consists of application specific interfaces, performance thresholds, and alarms applicable to specific performance management tools and the current operating system environment; and  
an operating system that automatically restarts, without intervention of an administrator, the performance management programs after generation of the configuration file.

App. No. 07/003,441

Response dated \_\_\_\_\_

Reply to Final Office Action of March 31, 2006

**DRAFT**

13. (original): The apparatus of claim 12, wherein the registry reads the information from hardware devices, application programs, and performance management programs automatically upon startup of the computer system.

14. (original): The apparatus of claim 12, wherein the registry reads the information automatically and periodically during operation of the computer system.

15. (original): The apparatus of claim 12, wherein the inventory file is an ASCII-format file.

16. (original): The apparatus of claim 12, wherein the hardware devices, application programs and performance management tools are installed in the computer system.

17. (original): The apparatus of claim 16, wherein one or more of the installed hardware devices, application programs and performance management tools are active, and wherein the kernel flags the active hardware devices, application programs and performance management tools.

18. (original): The apparatus of claim 12, further comprising an interface that provides manual updating of the inventory file.

19. (currently amended): A method for configuring performance management tools in a computer environment, comprising:

- discovering installed application programs in the computer environment;
- discovering installed performance management tools in the computer environment;
- discovering active application programs in the computer environment;
- discovering active performance management tools in the computer environment;
- generating an inventory file of the installed and the active application programs and performance management tools, wherein the active application programs and performance management tools are flagged;



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**DRAFT**

generating a performance management tools configuration file based on features of the computer environment and the inventory file, where in the configuration file consists of application specific interfaces, performance thresholds, and alarms applicable to specific performance management tools; and

automatically restarting, without intervention of an administrator, the performance management tools to engage the performance management tools.

20. (original): The method of claim 19, wherein the discovering steps are performed automatically on startup of the computer environment, and further comprising:

manually amending the inventory file;

regenerating the performance management tools configuration file; and

restarting the performance management tools to engage the performance management tools, wherein the restarting step is performed after the regenerating step.

**DRAFT**

**REMARKS**

Claims 1-6 and 8-20 are pending. By this amendment, claims 1, 12, and 19 are amended. No new matter is introduced. Reconsideration and issuance of a Notice of Allowance are respectfully requested.

**Claim Rejections Under 35 U.S.C. §103**

On page 4 the Office Action rejects claims 1-6 and 8-20 under 35 U.S.C. § 103(a) over U.S. Patent 5,590,056 to Barritz (hereafter Barritz) in view of U.S. Patent 6,301,615 to Kutcher (hereafter Kutcher). This rejection is respectfully traversed.

Considering claim 1, the Office Action asserts that Barritz and Kutcher disclose all of the recited elements including "restarting the performance management software to engage the configuration of the performance management tools," and cites Barritz at Figure 6, step 310. Specifically, the Office Action asserts on page 3 that Barritz teaches "restarting" because the result of "starting" the performance management software (step 300 in FIG. 6) is the same as "restarting" the performance management software. Applicant respectfully disagrees. Claim 1 recites "restarting the performance management software" as an affirmative step, which is completely lacking in Barritz. Step 300 of Barritz -- Reporting Program Start -- generally corresponds to block 205 of the present application. There is no separate step in Barritz that corresponds to block 235 of the present application, which affirmatively restarts the performance tools. Barritz simply does not include an affirmative step of automatically restarting the performance tools without intervention of an administrator.

The Office Action further states on page 3 that "An interactive user 26 [of Barritz] may request the surveying program 12 to survey a single storage device ... because the operator 26 knows either that a software product has been installed on that storage device 14 or that a software product has been removed from that storage device 14 since the last time the survey program 12 surveyed that device 14," (emphasis in the original). Consequently, the Office Action asserts that the reporting program 60 of Barritz must engage the latest system configuration log 66 to reflect these changes. From the cited passage, it is apparent that a user requests to survey a storage device after, e.g., software is installed on that storage device, because the user knows when software is installed or removed. Barritz thus teaches away from automatically restarting the performance tools without intervention of an administrator.

Response dated \_\_\_\_\_

Reply to Final Office Action of March 31, 2006

**DRAFT**

Barritz is directed to an apparatus, and a corresponding method, for monitoring usage of computer programs, and similar events, and for recording such events. Barritz uses a surveying program 12 to survey storage devices 14, 16, and 18 to determine the program modules that are present in the storage devices. See col. 4, lines 44-56. Barritz's apparatus then compares the names of the program modules found in the storage devices to names in knowledge base 20, and when matches are found, records information pertinent to the program modules in system configuration log 66. See col. 5, lines 29-34. Once the surveying program 12 has completed its tasks, a monitoring program 22 operates to record event data, such as usage, for the program modules. See col. 9, lines 12-22. Note that when Barritz's apparatus is loaded into a computer system 10, the surveying program 12 is run, and then the monitoring program 22 is run. See col. 9, lines 12-22. Barritz does not disclose or suggest automatically restarting, without intervention of an administrator, the performance management software to engage the configuration of the performance management tools.

In contrast to Barritz, amended claim 1 recites a method for automatically configuring performance management software in a computer system, comprising inventorying applications and performance management tools ... and automatically restarting, without intervention of an administrator, the performance management software to engage the configuration of the performance management tools. Thus, claim 1 includes features not disclosed or suggested by Barritz and Kutcher. Since all the elements of claim 1 are not disclosed or suggested by Barritz and Kutcher, claim 1 is patentable.

Claims 2-6 and 8-11 depend from patentable claim 1, and for this reason and the additional features they recite, claims 2-6 and 8-11 are also patentable.

Independent claim 12 is an apparatus claim that corresponds to method claim 1. For the same reasons as noted above with respect to claim 1, claim 12 is also patentable. Claims 13-18 depend from patentable claim 12, and for this reason and the additional features they recite, claims 13-18 are also patentable.

Independent claim 19 is a method claim generally corresponding to method claims 1 and 9. For the same reasons as noted above for patentability of claims 1 and 9, claim 19 is also patentable. Claim 20 depends from patentable claim 19, and for this reason and the additional features it recites claim 20 is also patentable.

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**DRAFT**

In view of the above remarks, Applicant respectfully requests withdrawal of the rejection of claims 1-6 and 8-20 under 35 U.S.C. § 103(a). Prompt examination and allowance are respectfully requested.

Should the Examiner believe that anything further is desired in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

Date: \_\_\_\_\_

\_\_\_\_\_  
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